



ITG News

Keeping First Nations Informed



Publication 4267D

Catalog Number 37831N

Great Plains Edition

January 2004

Message From The Director

As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. Every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.



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Christie Jacobs

To add your name or e-mail address to our mailing list, please contact us via e-mail at Jeff.R.Claumont@irs.gov, or call Jeff Clairmont at (406) 752-6149 ext 24

Account or Tax Questions??
Call Customer Account Services at 1-877-829-5500



On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party’s investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian Country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



Pull-Tabs and Information Reporting

We often encounter questions regarding the reporting threshold for filing Forms W-2G for pull-tabs. We have found several tribes utilizing a threshold of \$1200, while current law sets the proper threshold as \$600, or 300 times the wager whichever is greater.

The underlying section of the Internal Revenue Code for most information reporting is Section 6041. Briefly, it requires that all payments of \$600 or more made in the course of a trade or business, involving rents, etc., and including "other fixed or determinable gains, profits, and income" must be reported to the Secretary.

Revenue Ruling 85-194 answers the question "Are Indian Tribal governments that operate bingo establishments subject to the information reporting requirements of section 6041 of the Internal Revenue Code?", by indicating that such winnings are subject to reporting.

The conclusion reached in the ruling is that the definition of "person" is broad enough to include governmental bodies, and that tribes in the trade or business of operating a bingo facility are subject to the information reporting requirements of Section 6041. Tribes that operate casinos would also meet the Code's definition of "person", and be required to file information returns per Section 6041.

Temporary Regulation 7.6041-1, "Return of information as to payments of winnings from bingo, keno, and slot machines" states:

(a) In general. On or after May 1, 1977, every person engaged in a trade or business and making a payment in the course of such trade or business of winnings (including winnings which are exempt from withholding under section 3402(q)(5)) of \$1,200 or more from a bingo game or slot machine play or of \$1,500 or more from a keno game shall make an information return with respect to such payment.

This regulation is very specific; the \$1,200 reporting threshold applies only to bingo and slot machine winnings. There is nothing in the Code or Regulations that equates pull-tabs to slot machines, and there is no regulation exempting pull-tabs from Section 6041, or setting a different amount at which reporting begins for pull-tab winnings.

Some may argue that "pull-tabs are similar to slot machines because the games are the same, and they are not like lotteries or keno because the patron does not pick out their own numbers." This argument will work when discussing gaming excise tax, since those definitions refer to "coin-operated devices" and use slot machines as an example. If a coin-operated device dispenses the pull-tab, then no excise tax is due. In determining the proper reporting threshold, it is important to realize that all slot machines are coin-operated devices, but not all coin-operated devices are slot machines. Different thresholds apply to each type of game, and the definition of "pull-tab" cannot be massaged based on the area of tax law in question. Games which are deemed to be pull-tabs for purposes of qualifying as Class II, must also be treated as pull-tabs for reporting purposes under the Internal Revenue Code.



Electronic Federal Tax Payment System (EFTPS)

Are you tired of filling out tax deposit coupons, writing checks, and then running to the bank to make your Federal Tax Deposits? If your answer is yes, then the Electronic Federal Tax Payment System (EFTPS) could be the easiest way to pay all your Federal Business Taxes. EFTPS is a tax payment system offered free from the U.S. Department of the Treasury. Using the your Personal Computer or a telephone, you input your tax payment information and send it.

When you enroll in EFPTS you can select how you want to make your payments. There are two primary payment methods and you can select either or both.

EFTPS-Direct is an electronic payment method that allows you to access EFTPS directly to report your tax information. On the date you indicate, you will instruct EFTPS to move the funds from your account to the Treasury's account. Funds will not move from your account until the date you indicate, and your tax records will be updated with the IRS. You can initiate your payment directly to EFPTS using the Internet, PC software (free Windows-based software that's easy to install and use), or your phone. All three input methods are interchangeable and you can make your payments 24 hours a day, 7 days a week.

Using the Online – Internet option allows you to cancel a payment, review your payment history and change bank account information. Online is easy to navigate and secure with both a PIN and Internet Password combination.

EFTPS also offers payment scheduling. You may schedule your payment instructions for up to 120 days in advance of the tax due date, and then EFTPS will automatically make your payments for you on the due date you indicate.

How does it work?

1. At least one day prior to your tax due date, before 8:00pm ET, you access EFTPS. EFTPS will prompt you for the necessary information to complete your tax payment.
2. The system processes the information reported, and when accepted, you receive an Electronic Funds Transfer Acknowledgement Number that you should keep for your records.
3. EFTPS will originate a debit transaction against your designated account on the date you indicated when you made your tax payment.
4. The funds will be transferred to the Treasury's account and the tax data will be reported to the IRS to update your tax records.

EFTPS-Through a Financial Institution is a payment method that allows you to instruct a financial institution to electronically move funds from your account to the Treasury's account. Not all financial institutions offer this service, so make sure your financial institution offers this service, find out how much it costs, and if you are eligible to use it.

How does it work?

1. At least one day prior to the tax due date, you initiate the tax payment through your financial institution. The tax payment must be made prior to your financial institution's ACH processing deadline.
2. Your financial institution will originate an ACH credit transaction to EFTPS, transferring the funds to

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(EFTPS cont'd)

the Treasury's account, and the tax data to IRS for updating your tax records.

Whether you use EFTPS-Direct or EFTPS-Through a Financial Institution, you're in control of initiating your tax payments. Your tax due date remains the same, and no government agency has access to your account.

Signing up is easy. To receive your Enrollment Form and instructions, call 1-800-555-4477 or 1-800-945-8400, or enroll online at www.eftps.gov. As soon as you receive your Confirmation Package and Personal Identification Number (PIN), you'll have everything you need to begin using EFTPS.

Is Your Anti-Money Laundering Program Set Up for Your Gaming Establishment?

As many of you may be aware, all gaming establishments with gross annual gaming revenues in excess of \$1,000,000 are required by 31 CFR 103 to have an anti-money laundering program in place. Title 31, or the Bank Secrecy Act (BSA), as it is commonly known, has guidelines specific to gaming establishments shown in 31 CFR 103.64.

Basically, you are required to develop and implement a written program to assure and monitor compliance as set forth in these regulations.

At a minimum each compliance program should provide:

1. A system of internal controls to assure ongoing compliance. These internal controls should be written and kept separate from the casino's own internal controls.
2. Internal and/or external independent testing for compliance.
3. Training of casino personnel, including training in the identification of unusual or suspicious transactions.
4. An individual or individuals (Compliance Officer) to assure day-to-day compliance.
5. Procedures for using all available information to determine:
 - a. The name, address, social security number, and other information, and verification of the same person;
 - b. The occurrence of unusual or suspicious transactions; and
 - c. Whether any record must be made and retained.
6. For casinos that have automated data processing system, the use of automated programs to aid in assuring compliance.

For a copy of the regulations you may either download them from www.aml.web.irs.gov or call your local ITG Specialist. We are also available to assist you with setting up your Anti-Money Laundering Program and/or as a resource for your Compliance Officer.

Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3 -1/6	10
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7 -1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4 -2/6	12	13 * Payroll date 2/7 -2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. ** = Make a Monthly Deposit if you qualify under that rule.

March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

By March 31

File Form 730 for applicable wagers accepted during February 2004.

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement.